

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jul 21, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOANNA R.<sup>1</sup>,

Plaintiff,

v.

FRANK BISIGNANO  
COMMISSIONER OF SOCIAL  
SECURITY<sup>2</sup>,

Defendant.

No. 4:24-CV-05139-RLP

ORDER REVERSING AND  
REMANDING THE  
COMMISSIONER'S DECISION  
FOR FURTHER ADMINISTRATIVE  
PROCEEDINGS

BEFORE THE COURT is an appeal from an Administrative Law Judge (ALJ) final decision denying supplemental security income under Title XVI of the Social Security Act. ECF No. 14. The Court considered the matter without oral

---

<sup>1</sup> Plaintiff's first name and last initial are used to protect her privacy.

<sup>2</sup> Frank Bisignano became the Commissioner of Social Security on May 7, 2025. Pursuant to Rule 25(d) of the Rules of Civil Procedure, Frank Bisignano is substituted for Leland Dudek as the Defendant in this suit

ORDER REVERSING AND REMANDING THE COMMISSIONER'S  
DECISION FOR FURTHER ADMINISTRATIVE PROCEEDINGS \* 1

1 argument. For the reasons discussed below, the Court concludes the ALJ  
2 committed harmful legal error in evaluating Ms. R.'s symptom testimony.  
3 Therefore, Ms. R.'s brief, ECF No. 14, is granted and the Commissioner's brief,  
4 ECF No. 20, is denied.

## 5 BACKGROUND

6 Ms. R. was nineteen years old on the alleged onset date of January 1, 2019.  
7 Tr. 215. Ms. R. did not complete high school. Tr. 84. She has never worked. Tr.  
8 85.

9 Ms. R. filed this claim for supplemental security income on June 14, 2021.  
10 Tr. 215-224. The claim was denied initially and upon reconsideration. Tr. 117-121,  
11 122-27. A hearing before an ALJ was held on November 20, 2023, at which Ms. R.  
12 testified as to her symptoms. Tr. 67-114. On December 28, 2023, the ALJ issued  
13 an unfavorable decision, Tr. 18-39, and the Appeals Council denied review. Tr. 1-  
14 6. The matter is now before this Court pursuant to 42 U.S.C. § 405(g).

## 15 STANDARD OF REVIEW

16 This Court's review of a final decision of the Commissioner of Social  
17 Security is governed by 42 U.S.C. § 405(g). The scope of review is limited; the  
18 Commissioner's decision will be disturbed "only if it is not supported by  
19 substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158  
20 (9th Cir. 2012). If the evidence in the record "is susceptible to more than one

1 rational interpretation, [the Court] must uphold the ALJ's findings if they are  
2 supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674  
3 F.3d 1104, 1111 (9th Cir. 2012).

4 Further, a district court "may not reverse an ALJ's decision on account of an  
5 error that is harmless." *Id.* An error is harmless "where it is inconsequential to the  
6 [ALJ's] ultimate nondisability determination." *Id.* at 1115 (quotation and citation  
7 omitted). The party appealing the ALJ's decision generally bears the burden of  
8 establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10, 129 S.  
9 Ct. 1696 (2009).

#### 10 FIVE-STEP EVALUATION PROCESS

11 A claimant must satisfy two conditions to be considered "disabled" within  
12 the meaning of the Social Security Act. First, the claimant must be "unable to  
13 engage in any substantial gainful activity by reason of any medically determinable  
14 physical or mental impairment which can be expected to result in death or which  
15 has lasted or can be expected to last for a continuous period of not less than twelve  
16 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant's  
17 impairment must be "of such severity that he is not only unable to do [his or her]  
18 previous work[,], but cannot, considering [his or her] age, education, and work  
19 experience, engage in any other kind of substantial gainful work which exists in  
20 the national economy." 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

1 The Commissioner has established a five-step sequential analysis to  
2 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§  
3 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, if the claimant is engaged  
4 in “substantial gainful activity,” the Commissioner must find that the claimant is  
5 not disabled. 20 C.F.R. §§ 404.1520(b), 416.920(b). At step two, the  
6 Commissioner considers the severity of the claimant’s impairment. 20 C.F.R. §§  
7 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the claimant suffers from “any impairment  
8 or combination of impairments which significantly limits [his or her] physical or  
9 mental ability to do basic work activities,” the analysis proceeds to step three. 20  
10 C.F.R. §§ 404.1520(c), 416.920(c). At step three, the Commissioner compares the  
11 claimant’s impairment to severe impairments recognized by the Commissioner to  
12 be so severe as to preclude a person from engaging in substantial gainful activity.  
13 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

14 If the severity of the claimant’s impairment does not meet or exceed the  
15 severity of the enumerated impairments, the Commissioner must assess the  
16 claimant’s residual functional capacity (RFC), which is the claimant’s ability to  
17 perform physical and mental work activities on a sustained basis despite his or her  
18 limitations, 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

19 At step four, the Commissioner considers whether, in view of the claimant’s  
20 RFC, the claimant is capable of performing work that he or she has performed in

1 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If  
2 not, the analysis proceeds to step five and the Commissioner considers whether, in  
3 view of the claimant's RFC, the claimant is capable of performing other work in  
4 the national economy. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

5 The claimant bears the burden of proof at steps one through four above.  
6 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to  
7 step five, the burden shifts to the Commissioner to establish that (1) the claimant is  
8 capable of performing other work; and (2) such work "exists in significant  
9 numbers in the national economy." 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2);  
10 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

#### 11 ALJ'S FINDINGS

12 At step one, the ALJ found Ms. R. has not engaged in substantial gainful  
13 activity since January 1, 2019, the alleged onset date. Tr. 20. At step two, the ALJ  
14 found that Ms. R. has the following severe impairments: schizoaffective disorder,  
15 substance abuse, generalized anxiety disorder, and obesity. *Id.*

16 At step three, Ms. R. contended she met or medically equaled Listings 12.03,  
17 schizophrenia spectrum and other psychotic disorders, 12.04, depressive, bipolar  
18 and related disorders, and 12.06, anxiety and obsessive-compulsive disorders. *Id.*  
19 To satisfy these listings, a claimant generally must satisfy the B criteria by  
20 demonstrating:

1 B. Extreme limitation<sup>[3]</sup> of one, or marked limitation of two, of the  
2 following areas of mental functioning (see 12.00F):

- 3 1. Understand, remember, or apply information (see 12.00E1).
- 4 2. Interact with others (see 12.00E2).
- 5 3. Concentrate, persist, or maintain pace (see 12.00E3).
- 6 4. Adapt or manage oneself (see 12.00E4).

7 20 C.F.R. Pt. 404, Subpt. P, App. 1, 12.03, 12.04, 12.06. Alternatively, these  
8 listings may be satisfied by demonstrating the C criteria are met:

9 C. Your mental disorder in this listing category is “serious and persistent;”  
10 that is, you have a medically documented history of the existence of the  
11 disorder over a period of at least 2 years, and there is evidence of both:

- 12 1. Medical treatment, mental health therapy, psychosocial support(s),  
13 or a highly structured setting(s) that is ongoing and that diminishes  
14 the symptoms and signs of your mental disorder  
15 (see 12.00G2b); and
- 16 2. Marginal adjustment, that is, you have minimal capacity to adapt to  
17 changes in your environment or to demands that are not already  
18 part of your daily life (see 12.00G2c).

19 *Id.*

20 The ALJ found that Ms. R. did not have an impairment or combination of  
impairments that meets or medically equals the severity of one of the listed  
impairments. Tr. 22. Specifically, the ALJ found Ms. R. did not satisfy the B

---

<sup>3</sup> When rating a claimant’s degree of limitation due to a mental impairment,  
the Commissioner uses the following five-point scale: None, mild, moderate,  
marked, and extreme. 20 C.F.R § 416.920a(c)(4). Extreme limitations are those  
“incompatible with the ability to do any gainful activity.” *Id.*

1 criteria for Listings 12.03, 12.04, or 12.06 because she had no more than moderate  
2 limitations in any of the four areas of mental functioning. Tr. 23. The ALJ found  
3 Ms. R. did not satisfy the C criteria because she only lived in a highly structured  
4 setting for a short time, and did not demonstrate marginal adjustment. Tr. 24.

5 After finding Ms. R. did not meet or medically equal the severity of one of  
6 the listed impairments, the ALJ assessed her RFC. Tr. 26-37. With regards to Ms.  
7 R.'s own statements concerning her symptoms, the ALJ found Ms. R.'s  
8 impairments could reasonably be expected to cause her alleged symptoms, but that  
9 her testimony was not entirely consistent with the medical evidence or the  
10 evidence in the record. Tr. 27-28. The ALJ then reviewed six medical opinions  
11 provided in the record. Tr. 33-37. Four opinions found Ms. R. had no more than  
12 moderate limitations in any area of functioning. Tr. 117-121, 122-27, 1304-13,  
13 1600-05. The remaining two, from Drs. David Morgan and Lucy Carstens, found  
14 she had multiple marked limitations. Tr. 317-21, 1638-39. The ALJ did not find the  
15 opinions of Drs. Morgan or Carstens persuasive, and found the opinions of the  
16 remaining four doctors partially persuasive. Tr. 33-37. When assessing Ms. R.'s  
17 RFC, the ALJ declined to find Ms. R.'s substance abuse material to its decision.  
18 Tr. 34.

19 With respect to the RFC, the ALJ found Ms. R. has the capacity to perform  
20 medium work, except she must avoid all exposure to workplace hazards, and can

1 perform only simple routine tasks in an environment not involving work requiring  
2 a specific production rate such as assembly line work or work that requires hourly  
3 quotas, but she can perform work involving simple work-related decisions and  
4 occasional workplace changes and occasional interaction with supervisors and  
5 coworkers and no interaction with the public as part of the job duties. Tr. 26.

6 At step four, the ALJ found Ms. R. had no past relevant work. Tr. 38. At  
7 step five, the ALJ found Ms. R. capable of performing other work available in  
8 significant numbers in the national economy such as an industrial sweeper, laundry  
9 laborer, or general factory helper. Tr. 38-39. Based on these adverse findings, the  
10 ALJ determined Ms. R. has not been under a disability, as defined in the Social  
11 Security Act, from January 1, 2019, through the date of the decision. *Id.*

## 12 ANALYSIS

13 Ms. R. does not contest the ALJ's findings on steps one and two of the five  
14 step evaluation process. She argues that the ALJ erred at step three by improperly  
15 finding she did not meet or medically equal the criteria of Listings 12.03, 12.04, or  
16 12.06. She also contends the ALJ improperly evaluated the medical opinions of  
17 Drs. Morgan and Carstens, and improperly rejected her own testimony concerning  
18 her symptoms.<sup>4</sup> Consequently, Ms. R. contends the ALJ formulated an incomplete  
19

---

20 <sup>4</sup> Ms. R's brief is not structured in a way that accounts for the applicable



1 RFC, and then erred at step five by finding her capable of performing work  
2 available in significant numbers in the national economy.

3 The Court concludes that the ALJ's findings concerning the listings and its  
4 treatment of the medical evidence were supported by substantial evidence.

5 However, the ALJ failed to provide specific, clear, and convincing reasons to reject  
6 Ms. R.'s testimony. This is reversible error requiring remand.

7 **A. The Listings**

8 Ms. R. contends the ALJ erred at step three by failing to find she met or  
9 medically equaled the B criteria for Listings 12.03, 12.04, and 12.06, or the C  
10 criteria for Listings 12.03 and 12.04. *Id.*

11 As stated above, the B Criteria for Listings 12.03, 12.04, and 12.06 all require:

12 B. Extreme limitation of one, or marked limitation of two, of the following  
areas of mental functioning (see 12.00F):

- 13 1. Understand, remember, or apply information (see 12.00E1).  
14 2. Interact with others (see 12.00E2).  
15 3. Concentrate, persist, or maintain pace (see 12.00E3).  
16 4. Adapt or manage oneself (see 12.00E4).

20 C.F.R. Pt. 404, Subpt. P, App. 1, 12.03, 12.04, 12.06.

17 legal framework. Ms. R's brief largely relies upon factual arguments, rebutting the  
18 ALJ's factual findings, without tying the factual claims to the five-step evaluation  
19 process. This lack of specific legal structure has unnecessarily complicated the  
20 Court's review of this matter.

1           Regarding her ability to understand, remember, or apply information, the  
2 ALJ found Ms. R. had no more than a mild limitation. Tr. 23. The ALJ cited to  
3 portions of her medical records wherein she was found to have normal memory,  
4 Tr. 338, and her normal performance at psychological examinations. Tr. 1309,  
5 1605.

6           Regarding her ability to interact with others, the ALJ found Ms. R. had a  
7 moderate limitation. Tr. 23. The ALJ cited her variable performance where she at  
8 times struggled to hold a conversation, Tr. 410, 1611, 1623, 1761-62, 1819, but  
9 generally could also interact with others normally. Tr. 373-74, 399, 1447, 1645,  
10 1666, 1673, 1799, 1911.

11           Regarding her ability to concentrate, persist, or maintain pace, the ALJ  
12 found Ms. R. had a moderate limitation. Tr. 23. The ALJ cited multiple occasions  
13 of providers assessing Ms. R. as being restless, anxious, or irritable, with concrete  
14 cognition and loose and circumstantial associations, although with good  
15 concentration and attention. Tr. 1611, 1623, 1761-62, 1819. The ALJ also cited  
16 occasions where Ms. R. struggled to pay attention or understand things, Tr. 1378,  
17 1447, and conversely her normal concentration at a psychiatric examination. Tr.  
18 1310.

19           Regarding her ability to adapt or manage oneself, the ALJ found Ms. R. had  
20 a moderate limitation. Tr. 23. The ALJ cited a to a psychological evaluation

1 wherein the evaluator found Ms. R. had an adolescent or child-like emotional level,  
2 and was dependent on others for assistance, Tr. 1603, and her performance at Dr.  
3 Morgan's evaluation wherein she had a depressed mood, delusions and  
4 hallucinations, and poor memory and abstract thought. Tr. 321. The ALJ also noted  
5 Ms. R.'s condition improved with time, citing multiple occasions in 2022 where  
6 she was anxious and reported hallucinations, but was otherwise assessed with  
7 normal mental status, Tr. 1506-07, 1522, 1546-47, 1577, and her improvement  
8 after using appropriate coping strategies. Tr. 1389, 1643, 1754.

9 The evidence cited by the ALJ in its decision constitutes substantial  
10 evidence in support of only mild or moderate limitations in the four areas of mental  
11 functioning contained within the B criteria. That Ms. R. can argue for a different  
12 conclusion using other evidence in the lengthy record is irrelevant. *See Magallanes*  
13 *v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989) (ALJ "responsible for resolving  
14 ambiguities" in the record). The ALJ's findings were supported by substantial  
15 evidence, and the Court will not disturb these findings on appeal.

16 The C Criteria for Listings 12.03 and 12.04 require:

17 C. Your mental disorder in this listing category is "serious and persistent;" that  
18 is, you have a medically documented history of the existence of the disorder  
over a period of at least 2 years, and there is evidence of both:

- 19 1. Medical treatment, mental health therapy, psychosocial support(s), or a  
highly structured setting(s) that is ongoing and that diminishes the  
symptoms and signs of your mental disorder (see 12.00G2b); and
- 20 2. Marginal adjustment, that is, you have minimal capacity to adapt to  
changes in your environment or to demands that are not already part of

1 your daily life (see 12.00G2c).

2 20 C.F.R. Pt. 404, Subpt. P, App. 1, 12.03, 12.04.

3 The ALJ reasoned the C criteria were not met because Ms. R. did not live in  
4 a highly structured setting, other than a 3 month stay in a psychiatric hospital and  
5 subsequent time in a residential facility, and because there was no evidence of her  
6 marginal adjustment as she was able to attend school and go on trips. Tr. 1447,  
7 1752-53.

8 Substantial evidence supports the ALJ's finding that the C criteria were not  
9 met. While Ms. R. argues she resided in supportive housing to cope with her  
10 symptoms, she does not address the fact that the record lacks evidence of her  
11 marginal adjustment. As the ALJ noted, Ms. R. frequently handled changes in her  
12 environment and demands that were not part of her daily life. This constitutes  
13 substantial evidence in support of the ALJ's finding that there was no evidence of  
14 marginal adjustment, and thus that the C criteria were not met.

15 **B. Medical Opinions**

16 Ms. R. contends the ALJ failed to properly evaluate the medical opinions of  
17 Drs. Morgan and Carstens. This criticism appears to pertain both to the ALJ's  
18 determination at step three as to whether Ms. R. met or medically equaled a listing,  
19 and to its assessment of Ms. R.'s RFC. Ms. R. appears to contend that if the ALJ  
20 accepted the medical opinions of Drs. Morgan and Carstens, then at step three it

1 would have found she had marked limitations in the four areas of mental  
2 functioning, thus satisfying the B criteria for Listings 12.03, 12.04, and 12.06.  
3 With regards to her RFC, Ms. R. appears to contend that accepting the opinions of  
4 Drs. Morgan and Carstens would have led to the assessment of greater limitations  
5 to her RFC, which in turn would have rendered her incapable of performing work  
6 available in significant numbers in the national economy at step five.

7 The regulations provide that an ALJ must consider and evaluate the  
8 persuasiveness of all medical opinions or prior administrative medical findings  
9 from medical sources. 20 C.F.R. §§ 404.1520c, 416.920c. Supportability and  
10 consistency are the most important factors in evaluating the persuasiveness of  
11 medical opinions and prior administrative findings, and therefore the ALJ is  
12 required to explain how both factors were considered. 20 C.F.R. §§  
13 404.1520c(b)(2), 416.920c(b)(2). The ALJ may, but is not required, to explain how  
14 other factors were considered. 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2); *see*  
15 20 C.F.R. §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5).

16 1. *David Morgan, Ph.D.*

17 Dr. Morgan performed a psychological evaluation of Ms. R. on August 24,  
18 2021. Tr. 317-21. He opined Ms. R. had a chemical dependency of moderate to  
19 marked severity, and daily psychosis of marked to severe severity. Tr. 318. He  
20 diagnosed Ms. R. with Schizoaffective Disorder, Depressive Type and Stimulant

1 Use Disorder, In Early Remission. *Id.* His evaluation included a mental status  
2 examination, wherein Dr. Morgan found Ms. R. had had normal speech,  
3 cooperative behavior, depressed mood, normal affect, delusional thought patterns,  
4 a distorted sense of perception due to hallucinations, normal memory, normal  
5 concentration, normal insight and judgment, an inadequate fund of knowledge due  
6 to being unable to name bordering states, and inadequate abstract thought due to  
7 being unable to interpret two proverbs. Tr. 320-21.

8 Dr. Morgan summarily opined Ms. R. had marked limitations in her ability  
9 to:

- 10 • Perform activities within a schedule, maintain regular attendance, and be
- 11 • punctual within customary tolerances without special supervision;
- 12 • Learn new tasks;
- 13 • Perform routine tasks without special supervision;
- 14 • Adapt to changes in a routine work setting;
- 15 • Make simple work-related decisions;
- 16 • Ask simple questions or request assistance;
- 17 • Communicate and perform effectively in a work setting;
- 18 • Maintain appropriate behavior in a work setting; and
- 19 • Complete a normal work day and work week without interruptions from
- 20 psychologically based symptoms.

16 Tr. 319. Dr. Mogan also opined that Ms. R.'s limitations were not primarily the  
17 result of her substance abuse disorder, and would persist following 60 days of  
18 sobriety. *Id.*

19 The ALJ found Dr. Morgan's opinions unpersuasive because they were  
20 unsupported and inconsistent with the record as a whole. Tr. 34-35.

1       Regarding supportability, the ALJ found Dr. Morgan’s assessed limitations  
2 inconsistent with his findings from the mental status examination. *Id.* This finding  
3 is supported by substantial evidence. Dr. Morgan’s opinion does not explain why  
4 he found the limitations he did. Some limitations appear to be directly contradicted  
5 by Ms. R.’s performance during her mental status examination—for example, the  
6 assessed marked limitation in her ability to ask simple questions or request  
7 assistance appears to be contradicted by her normal speech, cooperative behavior,  
8 and normal insight and judgment. Tr. 320-21. While some of Dr. Morgan’s  
9 findings could be interpreted to support his assessed limitations, identifying what  
10 findings support what limitations requires significant guesswork on the part of the  
11 reader. As Dr. Morgan failed to provide support for his assessed limitations, the  
12 ALJ did not err by finding Dr. Morgan’s opinion was unsupported.

13       Regarding consistency, the ALJ found inconsistency between the assessed  
14 limitations and Ms. R.’s medical records, which showed that at times she reported  
15 no hallucinations, engaged in conversation without difficulty, was pleasant and  
16 easy to understand, and that she could use appropriate coping strategies to manage  
17 her symptoms. Tr. 34-35. The ALJ also found Dr. Morgan’s assessed limitations  
18 inconsistent with Ms. R.’s unremarkable performance at a later psychological  
19 examination. *Id.* As the ALJ found, Ms. R.’s records show her condition improved  
20

1 in the years after Dr. Morgan's opinion in August 2021. The ALJ's cited evidence  
2 constitutes substantial evidence in support of the ALJ's finding of inconsistency.

3 Ms. R. contends the ALJ improperly rejected Dr. Morgan's opinion based on  
4 waxing and waning symptoms. See *Attmore v. Colvin*, 827 F.3d 872, 877 (9th Cir.  
5 2016). While Ms. R. displayed waxing and waning symptoms with regards to her  
6 hallucinations and paranoia, the more important point made by the ALJ is that she  
7 showed consistent improvement and an ability to manage these symptoms. As  
8 noted by the ALJ, Ms. R. repeatedly stated she was doing well and managing her  
9 symptoms. Tr. 373-74, 383, 399, 1288, 1310, 1389, 1447, 1491, 1620, 1645, 1666,  
10 1673, 1799, 1911. While Ms. R. continued to experience bad days, there is  
11 substantial evidence that her condition improved between Dr. Morgan's evaluation  
12 in August 2021 and the ALJ's decision in 2023. Therefore, it was not an error for  
13 the ALJ to find Dr. Morgan's assessed limitations inconsistent with the record as a  
14 whole.

15 With regards to Dr. Morgan's opinion on Ms. R's substance abuse disorder,  
16 the ALJ found "The statement regarding the effect of the claimant's substance  
17 abuse is inherently neither valuable nor persuasive in accordance with 20 CFR  
18 416.920b(c) and SSR 13-2p." Tr. 34. Ms. R. argues that the ALJ's rejection of Dr.  
19 Morgan's findings on substance abuse lacked substantial evidence.



1 SSR 13-2p provides, in relevant part, “In disability hearings conducted by a  
2 disability hearing officer at the reconsideration level, the disability hearing officer  
3 determines whether the [substance use disorder] is material to the determination of  
4 disability.” 2013 WL 621536 at \*14. A materiality determination is made only  
5 where there is medical evidence establishing a claimant has a substance use  
6 disorder, and there is a finding that the claimant is disabled considering all  
7 impairments, including the substance use disorder. *Id.* at \*4.

8 20 CFR § 416.920b(c)(3) provides that medical source statements on issues  
9 reserved to the Commissioner are neither valuable nor persuasive.

10 The ALJ was not required to make a materiality determination as to Ms. R.’s  
11 substance use disorder, or to “differentiate the level of limitation in the claimant’s  
12 functioning”, ECF No. 14 at 9-10, unless it first found her to be disabled  
13 considering all of her impairments. The ALJ did not find Ms. R. to be disabled,  
14 even without differentiating between Ms. R.’s substance use disorder order and her  
15 other disorders. Therefore, the ALJ did not err by failing to render a materiality  
16 determination on Ms. R.’s substance use. Moreover, the ALJ’s decision not to  
17 credit Dr. Morgan’s opinion on substance abuse was in accordance with 20 CFR §  
18 416.920b(c)(3) as SSR 13-2p reserves the determination of a substance use  
19 disorder’s materiality to the ALJ. For these reasons, no error occurred.

20 2. *Lucy Carstens, Ph.D.*

1 Dr. Carstens performed a medical evidence review on October 23, 2023,  
2 reviewing the opinions of Dr. Morgan, Dr. Ronald Page, and Ms. R.'s medical  
3 records. Tr. 1638-39. Dr. Page opined Ms. R. had no more than moderate  
4 limitations in her ability to perform work activities. Tr. 1600-05. Dr. Carstens  
5 opined the diagnoses of schizoaffective and substance use were disorder consistent  
6 with the available evidence. Tr. 1638. She summarily opined Ms. R. had marked  
7 limitations in her ability to:

- 8 • Perform activities within a schedule, maintain regular attendance, and be
- 9 punctual within customary tolerances without special supervision;
- 10 • Adapt to changes in a routine work setting;
- 11 • Communicate and perform effectively in a work setting;
- 12 • Maintain appropriate behavior in a work setting; and
- 13 • Complete a normal work day and work week without interruptions from
- 14 psychologically based symptoms

15 *Id.*

16 The ALJ found Dr. Carstens's opinions unpersuasive because they were  
17 unsupported and inconsistent with the record as a whole. Tr. 36.

18 Regarding supportability, the ALJ found that Dr. Carstens "did not offer  
19 specific evidence or finding to support her opinion." *Id.* This finding is supported  
20 by substantial evidence, as Dr. Carstens's opinion summarily assessed limitations  
without explanation or analysis. The ALJ also noted that Dr. Carstens's opinion  
was not supported by the opinions of Drs. Morgan and Page. *Id.* This finding too is  
supported by substantial evidence. Dr. Page opined Ms. R. had no marked

1 limitations, Tr. 1602, and as discussed above Dr. Morgan's opinion was itself  
2 unsupported. Therefore, all reasons provided by the ALJ in support of its findings  
3 on supportability were supported by substantial evidence.

4       Regarding consistency, the ALJ found inconsistency between Dr. Carstens's  
5 assessed limitations and Ms. R.'s medical records. Tr. 36. The inconsistencies  
6 identified by the ALJ were largely the same as those previously cited as  
7 inconsistent with Dr. Morgan's opinion. Thus, for the same reasons as discussed  
8 above, the ALJ's finding of inconsistency was supported by substantial evidence.

9 **C. Symptom Testimony**

10       Ms. R. contends the ALJ improperly rejected her testimony concerning the  
11 severity of her symptoms. Ms. R. appears to contend that if the ALJ did not  
12 improperly reject her testimony, then it would have assessed greater limitations to  
13 her RFC, which in turn would have rendered her incapable of performing work  
14 available in significant numbers in the national economy at step five.

15       An ALJ engages in a two-step analysis to determine whether to discount a  
16 claimant's testimony regarding subjective symptoms. SSR 16-3p, 2016 WL  
17 1119029, at \*2. "First, the ALJ must determine whether there is 'objective medical  
18 evidence of an underlying impairment which could reasonably be expected to  
19 produce the pain or other symptoms alleged.' " *Molina*, 674 F.3d at 1112 (quoting  
20 *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). Second, "[i]f the claimant

1 meets the first test and there is no evidence of malingering, the ALJ can only reject  
2 the claimant's testimony about the severity of the symptoms if [the ALJ] gives  
3 'specific, clear and convincing reasons' for the rejection." *Ghanim v. Colvin*, 763  
4 F.3d 1154, 1163 (9th Cir. 2014) (citations omitted). "The clear and convincing  
5 [evidence] standard is the most demanding required in Social Security cases."  
6 *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm'r*  
7 *of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

8 At the first step, the ALJ found there was objective medical evidence of an  
9 underlying impairment which could reasonably be expected to produce the  
10 symptoms Ms. R. alleged. Tr. 28. At the second step the ALJ found Ms. R.'s  
11 statements about the intensity, persistence, and limiting effects of her symptoms to  
12 be inconsistent with the record. *Id.*

13 The ALJ's analysis was inadequate because it did not identify what specific  
14 testimony or other statements from Ms. R. it found inconsistent with the record, or  
15 what specific evidence was inconsistent with her testimony. Instead, the ALJ  
16 provided lengthy summaries of Ms. R.'s testimony and the record without further  
17 analysis or explanation. While one might be able to infer what testimony the ALJ  
18 found inconsistent with the record and why, "[i]nferred reasons fail[] to meet the  
19 specific, clear and convincing standard." *Juan G. v. Kijakazi*, 2021 WL 5240498,  
20 at \*5 (E.D. Wash. Aug. 19, 2021). Instead, the ALJ must identify what testimony is

1 being discounted, and what evidence undermines these claims. *See Holohan v.*  
2 *Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001); *see also Lambert v. Saul*, 980  
3 F.3d 1266, 1277 (9th Cir. 2020) (While the ALJ is not required to perform a line-  
4 by-line analysis of the claimant’s testimony, the ALJ is still required to do more  
5 than offer “non-specific conclusions that [claimant’s] testimony was inconsistent  
6 with her medical treatment.”). The ALJ’s failure to do so is error requiring remand  
7 for Ms. R.’s symptom testimony to be re-evaluated.

#### 8 **D. Other Challenges**

9 Ms. R. also raises other challenges to the ALJ’s formulation of her RFC and  
10 its analyses at steps four and step five. However, because this case is remanded for  
11 the ALJ to properly consider Ms. R.’s symptom claims, the Court declines to  
12 address these other challenges. On remand, the ALJ is instructed to reevaluate Ms.  
13 R.’s symptom claims and conduct a new sequential analysis.

#### 14 **E. Remedy**

15 Ms. R. urges the Court to remand for an immediate award of benefits.

16 Generally, an ALJ’s failure to make adequate findings necessitates a remand  
17 for additional proceedings to make such findings. *Lewin v. Schweiker*, 654 F.2d  
18 631, 635 (9th Cir. 1981). However, the Court has the power to affirm, modify, or  
19 reverse a decision with or without remanding for a rehearing. 42 U.S.C. § 405(g).  
20 “Courts have generally exercised this power when it is clear from the record that a

1 claimant is entitled to benefits.” *Garrison v. Colvin*, 759 F.3d 995, 1019 (9th Cir.  
2 2014).

3 Where the ALJ makes a legal error, but there is a need to resolve conflicting  
4 evidence and ambiguities in the record, a remand for an award of benefits is  
5 inappropriate. *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1101 (9th  
6 Cir. 2014). Only where there are no outstanding issues requiring resolution can a  
7 witnesses’ testimony be credited as true without further proceedings. *Id.* at 1105-  
8 06.

9 Here, it is not clear from the record that the ALJ would be required to find  
10 Ms. R. disabled if the evidence was properly evaluated. Further proceedings are  
11 necessary for the ALJ to reconsider Ms. R.’s symptom testimony and conduct a  
12 new sequential evaluation.

### 13 CONCLUSION

14 Having reviewed the record and the ALJ’s findings, this Court concludes the  
15 ALJ’s decision is not free of harmful legal error.


### 16 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 17 1. Ms. R.’s Brief, **ECF No. 14**, is **GRANTED in part**.
- 18 2. The Commissioner’s Brief, **ECF No. 20**, is **DENIED**.

3. This case is **REVERSED** and **REMANDED** for further administrative proceedings consistent with this Order pursuant to sentence four of 42 U.S.C. § 405(g).

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order and provide copies to counsel. Judgment shall be entered for Plaintiff and the file shall be **CLOSED**.

DATED July 21, 2025.

  
REBECCA L. PENNELL  
UNITED STATES DISTRICT JUDGE